

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 42 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 :YES; 2 to 5 : NO
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PATABHAI RAMBHAI

Versus

STATE OF GUJARAT

Appearance:

MR BD KARIA for Petitioner
MS KATHABEN GAJJAR APP for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3, 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. Under the order dated 6th October, 1998 made by the Sub-Divisional Magistrate, Mahua under Section 36 of the Bombay Police Act, 1951, the petitioner is ordered to

be externed from the limits of Bhavnagar and Amreli Districts. Feeling aggrieved, the petitioner preferred an appeal before the State, which too has been dismissed under the order dated 4th January, 1999. Therefore, the petition.

3. Learned advocate Mr. Karia has appeared for the petitioner and has contended that the order of externment is illegal and arbitrary. He has submitted that in the year 1997, the petitioner and his wife had contested Gram Panchayat election and had lost. On account of election certain rival groups were formed in the village which resulted into complaint and counter complaint against one another. It is the members of the rival faction who had made complaint against the petitioner, pursuant to which, the impugned order has been made. The impugned order, therefore, is vitiated on account of malafide. It is further submitted that the order of externment is based on certain nefarious activities alleged to be carried on by the petitioner. It is stated that the petitioner harasses the residents of the village and also extorts money. However, the allegations are vague and no specific incident of the kind has been referred to. He has further contended that the complaints referred to are that of the year 1994 and 1996. The complaints lodged in the year 1997 are on account of political rivalry. It is at the behest of the rival faction that the externment order is made and for which, the 1994 and 1996 complaints are being relied upon. Such belated order of externment on the basis of incidents of 1994 and 1996 is vitiated. Besides, the petitioner in support of his defence had examined as many as 7 witnesses. The statements made by those witnesses have not been taken into consideration. Further, the order of externment refers to a Chapter case instituted against the petitioner under Section 107 CrPC. However, the same has not been referred to in the show cause notice. Thus, the order of externment travels beyond the show cause notice and is vitiated for non-observance of the principles of natural justice. In support of his contentions, he has relied upon the judgments of this Court in the matter of Maneklal Mulchandbhai Patel & Ors. v. The Competent Authority & Additional Collector & Anr. [1996 (1) GLH 53]; Babubhai Kishan Kahar v. Deputy Commissioner of Police, Vadodara & Anr. [1996 (1) GLR 553]; Kathi Harsur Rukhad v. State of Gujarat & Anr. [1986 (1) GLR 682]; Babu Hajiammunuthalla Ansari v. State of Gujarat [1992 (2) GLJ (UJ) 27]; Ismail Mahmmmed Shekh v. Sub-Divisional Magistrate & Anr., [1985 (2) GLR 910]; Saiyed Husain Saiyed Umar v. State of Gujarat & Anr. [1985 (2) GLR 1045]; Abbas Hussain Fateh Mahmmmed v. Dy. Commissioner

of Police, Surat & Anr. [1987 (1) GLH 222]; Dafer Rahman Zarar v. State of Gujarat & Ors. [1999 (1) GLH 425]; Balvantsingh @ Nanio Kalyansingh Rajput Lalbaug, Vadodara v. Deputy Commissioner of Police, Vadodara & Anr., [1999 (1) GLH 207]; and Mustufamiya Pirsahedmiya Saiyed v. State of Gujarat & Anr., [1999 (1) GLH 913].

4. The show cause notice dated 20th April, 1998 was issued by the Sub-Divisional Magistrate, Mahua. The petitioner was called upon why the order of externment may not be made against him on the ground referred to therein. The Sub-Divisional Magistrate has narrated several grounds in support of his proposal for externment. It is stated that (i) the petitioner moves about in public with lethal weapon and tries to browbeat the people; (2) that he commits offences against property and the person; (3) that he extorts money from the innocent people and the passersby; (iv) that he threatens the people of dire consequences in case they made complaint against him; (v) he purchases goods and groceries from the shops without paying for the same; (vi) that he extorts money under the threat; (vii) that he projects himself as a Don. The said show cause notice also refers to the five offences registered against the petitioner. It is obvious that the grounds referred to in the show cause notice are general in nature and vague in character. The show cause notice does not disclose what kind of weapon the petitioner carries or when he was seen with such weapon. It does not refer to any specific incident of harassment to the residents of village or extortion. Besides, the chapter case referred to in the order of externment has not been referred to in the show cause notice. It is undisputed that the petitioner in his defence had examined seven witnesses, however, the statement of neither of the said witnesses has been considered by the externing authority. It is tried to be argued that the externing authority has considered the statements of witnesses, however, the said witnesses being the co-accused with the petitioner in the offence registered against him, the same were not reliable. Even if it is true that the externing authority has taken said statements into consideration, such consideration has to be manifest from the order of externment. The order cannot be improved upon by filing an affidavit or by oral arguments. The contention that the complaints against the petitioner were made by his political rivals has not been considered. The order of externment, therefore, also suffers from the vice of non-application of mind. Hence, in my view, the show cause notice being vague and too general in nature, the consequential order of externment is vitiated. The order of externment is also

vitiated for non-application of mind and for being violative of principles of natural justice.

5. For the reasons recorded hereinabove, the petition is allowed. The impugned order of externment dated 6th October, 1998; Annexure-F to the petition and the order dated 4th January, 1999 of the Appellate Authority; Annexure-H to the petition, are quashed and set-aside. Rule is made absolute.

Prakash*